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# NEMONIA INVESTMENTS LTD v. AMBANK ISLAMIC BHD & ORS

HIGH COURT MALAYA, KUALA LUMPUR
MOHD ARIEF EMRAN ARIFIN J
[SUIT NO: WA-22NCVC-306-05-2018]
B 10 AUGUST 2023

**Abstract** – *Banks in this era should bear some responsibility and owe a duty of care to users of the financial system irrespective of whether they are their customers or otherwise. Especially with the growth of scams and fraudulent activities by third parties, notices of alleged fraud from instructing banks should not be ignored. Banks ought to undertake an investigation immediately upon receipt of such notices and freeze the accounts until such time it is satisfied that the allegations are not genuine. To ignore the said notices and allow withdrawal of the funds is evidence of negligence on the part of the bank.*

***BANKING:*** *Negligence – Professional negligence – Transfer of funds to accounts of fraudsters – Whether banks had duty of care to victim of scam – Whether there was breach of duty of care – Standard of care – Proof – Whether victim of scam discharged burden of proof required in claim of negligence – Whether banks would have foreseen transactions undertaken fraudulently by scammers – Whether banks had duty to act when receiving notice of fraud from instructing banks – Whether victim of scam estopped or barred from claiming sums against banks*

***TORT:*** *Negligence – Professional negligence – Banking – Transfer of funds to accounts of fraudsters – Whether banks had duty of care to victim of scam – Whether there was breach of duty of care – Standard of care – Proof – Whether victim of scam discharged burden of proof required in claim of negligence – Whether banks would have foreseen transactions undertaken fraudulently by scammers – Whether banks had duty to act when receiving notice of fraud from instructing banks – Whether victim of scam estopped or barred from claiming sums against banks*

The plaintiff was a victim of a fraudulent scheme/scam undertaken by an unidentified group of individuals. Participants in this scheme allegedly included one Siti Mah Penggawa through her accounts held in the name of Matt Advance Trading or Weez Global Trading in the banks identified as defendants. The plaintiff contended that its lawyer was duped by unknown individuals to cause funds from their account held in the Bank of Cyprus to be paid to Matt Advance Trading or Weez Global Trading. The plaintiff claimed that the defendants had been negligent in undertaking their business as bankers in Malaysia and that their aforesaid negligence caused damages to the plaintiff. The plaintiff brought this action and claimed that the defendants were negligent: (i) in allowing the said fraudsters to open and operate their accounts with the bank; (ii) in not ensuring that these fraudulent transactions

were identified and stopped; (iii) by failing to monitor inbound payments to identify potentially suspicious activities or turning a blind eye to suspicious activities; (iv) in allowing fraudsters to abuse and misuse the banking system to commit fraud; (v) by failing to comply with regulatory requirements to prevent money laundering; (vi) by failing to verify the authenticity of payment orders as the parties, Nemonia and the fraudsters did not have any relationship earlier; (vii) by facilitating or making it easier for the fraudsters to undertake their scheme against the plaintiff. The defendants denied the claims and alleged that they were not negligent, especially taking into account that (i) they had acted under the instructions given by the paying bank (Deutsche Bank and Society General) and/or (ii) that they did not owe any duty of care to the plaintiff as it was not their client and that it would be too remote to expect their actions may have any impact on the plaintiff. The first defendant specifically contended that there was no evidence that the said transaction was fraudulent. The said bank's solicitors contended that the transfer of the said funds was genuine. The issues that arose were, *inter alia* (i) whether there existed a duty of care owed to the plaintiff; (ii) whether the defendants breached the duty of care; (iii) whether there was a duty to act when notice of fraud was received from Deutsche Bank, Society General and Bank of Cyprus

**Held (allowing claims against first defendant; dismissing claim against second to fourth defendants):**

**(1)** It is trite that a bank has to ensure that (i) payment is made with the authority of the customer; and (ii) the person who is being paid is entitled to receive the payment. There is a breach of duty of care if a bank makes payment without the customer's authority or mandate. No banking transaction would be safe if a bank flouts that in the name of convenience or no reason to be 'put on inquiry.' (para 14)

**(2)** The fact that the defendants did not have any direct relationship with the plaintiff, *ie,* the company was not a customer of the banks or had any contractual relationship, did not automatically mean that the banks did not owe any duty of care. Considering that the defendants were aware that the monies were transferred from the accounts of the plaintiff from the Bank of Cyprus, the said defendants did have an indirect relationship with the plaintiff. There was a relationship of proximity between the plaintiff and the defendants fulfilling the proximity test. It was also foreseeable that the defendant's conduct could harm the plaintiff. It was thus fair, just and reasonable to impose liability to the defendants for such harm. Banks in this era, should bear some responsibility and owe a duty of care to users of the financial system irrespective of whether they were their customers or otherwise. (paras 12, 21, 22, 23, 24 & 25)

**(3)** The burden of proof to show the standard that the plaintiffs wish to put the defendants to relied solely on the plaintiff. It was not for the defendant to prove the standard until such time the plaintiff proved the case of negligence, especially that of the standard of care that they rely on. The plaintiff did not call any party or any person to testify and explain the standard expected of a reasonably competent banker in: (i) opening an account; (ii) monitoring accounts; (iii) standard operating procedure in Swift transactions; and (iv) required anti-money laundering procedures that are required by banks or by the Central Bank of Malaysia. At the very least, the plaintiff should have produced the guidelines or regulations made out by the Central Bank of Malaysia or internally of these banks or other banks to enable this court to ascertain the standard of care required of a professional banker. Therefore, the plaintiff had failed to discharge the burden of proof required of it in its claim for negligence concerning the issue of (i) opening of the accounts by the defendants on behalf of Matt Advance Trading and Weez Global Trading; (ii) compliance with money laundering regulations; and (iii) enabling fraudsters to utilise banking transactions. Further, at the time of the opening of those accounts, the evidence of the witnesses showed that standard due diligence tests were undertaken by the banks. As such, this court had no choice but to find against the plaintiff on the issue of negligence on the above claims. (paras 32-41)

**(4)** Section 14 of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ('AMLA') states that the defendants are required to report to Bank Negara Malaysia any transaction exceeding RM50,000 or where it could be shown that there exist any circumstances of the transaction that provides any reason to suspect that the proceeds were from unlawful activity. Section 22(1) of the same Act requires officers of such banks to take all reasonable steps to ensure compliance with the requirements of prompt reporting. However, at the time when the monies were received, it could not be said that the said transaction was on its face value suspicious. Furthermore, the officers of the defendants explained that they had checked with Deutsche Bank as to the purpose of the said payment or checked with the client/customer as to the purpose of the said payment. Having received a response from Deutsche Bank and the customer as to the purpose of the said payment, it could not be said that these defendants were negligent. When the transaction was instructed by the instructing banks, Deutsche Bank and Society General, the defendants would not have known or could have foreseen that the said transactions were undertaken fraudulently by scammers. Concerning the first defendant, there was no evidence of any wrongdoing justifying a claim of negligence against the said entity when they received the instructions to remit the payment into the relevant accounts. (paras 43-48)

**(5)** The defendants had received clear instructions from the instructing banks to pay the aforesaid sums into the accounts held by Weez Trading and Matt Advance Trading. There was no evidence of any requirement or regulation that the defendants or any bank undertake any investigation to the purpose of these payments unless it was shown there were suspicious circumstances. The facts as it appeared at the time when the said sums were received, did not on their side show any suspicious circumstances justifying any form of investigation. Therefore, on the issue of monitoring the accounts of the alleged scammers when the monies were received, the defendants had not breached their duty of care to the plaintiff. (paras 52-54)

**(6)** The second to fourth defendants did not breach their duty of care to the plaintiff at the time when notice of the alleged fraud was received from the instructing banks, Deutsche Bank and Society General and even from the Bank of Cyprus. When the notices were issued by the said banks to the second to fourth defendants, monies in the accounts at issue were withdrawn and the defendants could not have taken any action to freeze the accounts. The said defendants were not negligent as claimed by the plaintiff. As to the first defendant, this court should consider that once notices were issued, banks should not shirk from their obligation to ensure that such transactions were stopped. The form utilised by the Bank of Cyprus, MT 999, may not have been the best or the most prudent notice to have been utilised. However, it was the contents of the said notice that must be looked at. Especially with the growth of scams and fraudulent activities by third parties, such notices should not be ignored totally. The first defendant should have undertaken an investigation immediately upon receipt of the said notice even if it was in the form of MT 999. The first defendant and its officers should have at least frozen the accounts and undertook an inquiry as to the validity of the claim/notice by Bank of Cyprus. They should not have ignored it. It was the substance of the allegation that should have been looked at and acted upon. A prudent and reasonable banker would have taken steps immediately upon receipt of the said notice. The first defendant should have taken the reasonable step of certifying the issues highlighted by Bank of Cyprus and frozen the accounts until such time it was satisfied that the said complaint was not genuine. To ignore the said notice and allow the withdrawal of the funds was evidence of the negligence of the first defendant. (paras 55-62)

**(7)** The plaintiff had constituted proceedings against the scammers as well as the enforcement proceedings against Siti Mah Penggawa, but the plaintiff had not successfully recovered the full sums wrongly withdrawn from its account in Cyprus. The plaintiff was not estopped or barred in any way from claiming these sums from the defendants. However, as this court only found liability against the first defendant for

A the sum of RM315,000 due to the first defendant's failure to take appropriate steps at the time the notice was received from the Bank of Cyprus, this sum was reduced to the sum of RM263,178.30 after considering the amount garnished by the plaintiff of RM51,821.70 from the account held with the first defendant. (paras 67-69)

B **Case(s) referred to:**

*Ang Yew Meng & Anor v. Dr Sashikannan Arunasalam & Ors [2012] 3 CLJ 937 HC* ***(refd)***

*Caparo Industries Plc v. Dickman [1990] 2 AC 605* ***(refd)***

*Chang Yun Tai & Ors v. HSBC Bank (M) Bhd & Other Appeals [2011] 7 CLJ 909 FC* ***(refd)***

C *Dato' Dr V Thuraisingam & Anor v. Sanmarkan Ganapathy & Anor [2015] 8 CLJ 248 CA* ***(refd)***

*Hong Chuan Lay v. Dr Eddie Soo Fook Mun [1998] 5 CLJ 251 HC* ***(refd)***

*Koperasi Sahabat Amanah Ikhtiar Bhd v. RHB Investment Bank Bhd [2023] 1 CLJ 495 CA* ***(refd)***

D *Lay Wan Yeow & Anor v. Chin Kok Soon & Anor [2023] 3 CLJ 309 CA* ***(refd)***

*Nyo Nyo Aye v. Kevin Sathiseelan Ramakrishnan & Anor And Another Appeal [2020] 5 CLJ 82 CA* ***(refd)***

*Payremalu Veerapan v. Dr Amarjeet Kaur & Ors [2001] 4 CLJ 380 HC* ***(refd)***

*Pushpaleela R Selvarajah & Anor v. Rajamani Meyyappa Chettiar & Other Appeals [2019] 3 CLJ 441 FC* ***(refd)***

E *Shalini Kanagaratnam v. Pusat Perubatan Universiti Malaya & Anor [2016] 6 CLJ 225 CA* ***(refd)***

*Shearn Delamore & Co v. Sadacharamani Govindasamy [2017] 2 CLJ 665 CA* ***(refd)***

*Sundram Ramasamy v. Arujunan Arumugam & Anor [1994] 4 CLJ 300 SC* ***(refd)***

**Legislation referred to:**

F Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001, ss. 14, 22(1)

Evidence Act 1950, s. 101

*For the plaintiff - Ramesh Sivakumar Ramaveloo & Calvin Lim Sim Guan; M/s Mehgala & Co*

G *For the 1st defendant - Kingston Tan & Kwong Ho Qong; M/s Heiley Hassan Tan & Partners*

*For the 2nd, 3rd & 4th defendants - Shaikh Abdul Saleem & S Nurul Ameerah Natasya; M/s Shaikh David & Co*

*Reported by Suhainah Wahiduddin*

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## JUDGMENT

### Mohd Arief Emran Arifin J:

### Introduction – Background Facts

I **[1]** The plaintiff is a victim of a fraudulent scheme or scam undertaken by an unidentified group of individuals. Participants in this scheme allegedly include one Siti Mah binti Penggawa through her accounts held in the name of Matt Advance Trading or Weez Global Trading in the banks identified as the defendants.

**[2]** The plaintiff contends that its lawyer, Messrs Chrysses Demetriades & Co, was duped by unknown individuals to cause funds from their account held in the Bank of Cyprus to be paid to Matt Advance Trading or Weez Global Trading. The following sums were transferred from the Bank of Cyprus to the aforesaid accounts as particularised below:

| No. | Bank/Defendant | Amount | Entity Receiving |
|---|---|---|---|
| 1 | Al-Rajhi from Deutsche Bank (on behalf of Nemonia through Bank of Cyprus) | USD 49,000.00 | Weez Global Trading is held in the account with Al-Rajhi. |
| 2 | Alliance Islamic Bank from Deutsche Bank (on behalf of Nemonia through Bank of Cyprus) | EURO 61,000.00 | Matt Advance Trading is held in the account with Alliance. |
| 3 | AmBank Islamic Bank Berhad from Society General Paris (although it is stated that instructing Bank as Bank of Cyprus) and AmBank acting as an agent of AmIslamic Bank Berhad | EURO 85,000.00 | Matt Advance Trading is held in the account with AmBank Islamic. |

All these payments were made under transactions undertaken through the Swift system. The defendants had credited payments to these bank accounts after receiving the appropriate instructions from the instructing banks in accordance with the notices issued according to the Swift system.

**[3]** I do note that AmIslamic Bank Berhad did also receive the sum of about Euro 80,000 on 2 January 2014 but this issue was not pleaded by the plaintiff as part of its claim against the defendants. Therefore, I must disregard the said transaction as it was not specifically pleaded.

**[4]** Various notices concerning the invalid payments or fraudulent transactions were issued by the following entities to the defendants which are identified below:

(A) AmBank Islamic Bank Berhad

| No | Date | Entities Involved | Contents | Action taken by Bank |
|---|---|---|---|---|
| 1 | 17-1-2014 | Society General (on behalf of Cyprus Bank) to AmIslamic Bank Berhad (Ambank as an agent of Amlslamic Bank Berhad) | Instruction to remit payment of Euro 84,950.00 to Matt Advance Trading (client of AmBank Islamic) from the Plaintiff. | Credit the account of Matt Advance Trading Euro 84,950.00 |
| 2 | 22-1-2014 | Bank of Cyprus to AmIslamic Bank Berhad (AmBank agent of Amlslamic Bank Berhad) | MT 999 Free Format Message Notifying AmBank<br>Notifying that/the earlier transaction is fraudulent and null and void. | AmIslamic did not freeze the account. Parts of the monies were withdrawn earlier.<br>The remaining money was withdrawn from the account held in Amlslamic Bank Berhad on 23-1-2014. |

(B) Alliance Islamic Bank Malaysia Berhad

| | | | | |
|---|---|---|---|---|
| 1 | 30-12-2013 | Deutsche Bank (as the agent of Cyprus Bank) to Alliance Islamic Bank | Instruction to remit payment of Euro 60,928.00 to Matt Advance Trading (client of AmBank Islamic) from the Plaintiff. | Alliance seeks clarification from Deutsche Bank on 3-1-2014 seeking the purpose of the said payment. |
| 2 | 8-1-2014 | Deutsche Bank (as the agent of Cyprus Bank) to Alliance Bank | Deutsche Bank informed Alliance Bank that the payment was for the invoice for Bontera Builders Properties. | The account of Matt Trading was credited based on the instruction of Deutsche Bank. |

| | | | | |
|---|---|---|---|---|
| 3 | 23-1-2014 | Bank of Cyprus to Alliance Bank | FIN 999 Bank of Cyprus informed Alliance Bank that the alleged payment was fraudulent and requested urgent action. | Payment could not be stopped as Matt Trading did withdraw the funds in full before 23-1-2014. Alliance Bank informed Bank Cyprus in the Swift message dated 22-1-2014. |

(C) Al-Rajhi Bank Berhad

| | | | | |
|---|---|---|---|---|
| 1 | 13-12-2013 | Deutsche Bank to Al Rajhi Bank Berhad | Deutsche Bank notified Al Rajhi to remit payment of Euro 48,933.00 into the account of Weez Global Trading on the instruction of the Plaintiff. | The accounts of Weez Global Trading were credited by Al Rajhi Bank. |
| 2 | 13-1-2014 | Bank of Cyprus to Al-Rajhi Bank | MT 999 Free Format Message Notifying Al Rajhi Bank. Notifying that/the earlier transaction is fraudulent and null and void. | No. Monies were fully withdrawn before 13-1-2014. |
| 3 | 23-1-2014 | Deutsche Bank to Al Rajhi Bank Berhad | FIN 199 Free Format Message Deutsche Bank notified Al Rajhi that the remitter of payment claimed that the payment was fraudulent and to consider the payment order null and void. | Payment could not be stopped as monies were withdrawn before 13-1-2014. |

| | | | | |
|---|---|---|---|---|
| 4 | 27-1-2014<br><br>29-1-2014<br><br>13-2-2014 | Deutsche Bank (agent of Cyprus Bank and Al Rajhi) to Al Rajhi Bank Berhad | FIN 999 Free Format Message<br><br>Deutsche Bank notified Al Rajhi that the remitter of payment claim that the payment was fraudulent and has reported the same to the authorities. Requested that the recipient account be blocked. | Payment could not be stopped as monies were withdrawn before 131-2014.<br><br>Al Rajhi informed Deutsche Bank that the payment was withdrawn in full earlier and could not be stopped by notice in the Swift system dated 5-2-2014. |

**[5]** The plaintiff claims that the defendants had been negligent in undertaking their business as bankers in Malaysia and that their aforesaid negligence caused damages to the plaintiff. Notices of demands and meetings were held with the said defendants. Unhappy with the responses, the plaintiff brought this action which led to the trial held on 28 October 2021 and 7 March 2023. The following witnesses gave evidence:

**Plaintiff's Witness**

(i) Sinelnik Yury (WSP-W1)

**First Defendants' Witness**

(ii) Mohd Zulhaini bin ZuallCobbey (WSD-W1)

**Second Defendant And Fourth Defendants' Witness**

(iii) Anizan binti Mohamad AN (WSD-W2)

(iv) Rozita binti Talib (WSD-W3)

**Third Defendant's, Witness**

(v) Suzzana Alysa binti Surul (WSD-W4)

(vi) Edrian bin Mohd (WSD-W5)

**Plaintiff's Claim And Defence**

**[6]** The plaintiff claims that the defendants were:

(i) negligent in allowing the said fraudsters to open and operate their accounts with the bank;

(ii) negligent in not ensuring that these fraudulent transactions are identified and stopped;

(iii) negligent by failing to monitor inbound payments to identify potentially suspicious activities or turning a blind eye to suspicious activities;

(iv) negligent in allowing fraudsters to abuse and misuse the banking system to commit fraud;

(v) negligent by failing to comply with regulatory requirements to prevent money laundering;

(vi) negligent by failing to verify the authenticity of payment orders as the parties, Nemonia and the fraudsters (Matt Advance Trading and Weez Global) did not have any relationship earlier; and

(vii) negligent by facilitating or making it easier for the fraudster to undertake their scheme against the plaintiff.

**[7]** The defendants deny the above claims and allege that they were not negligent, especially taking into account that (i) they had acted under the instructions given by the paying bank (Deutsche Bank and Society General) and/or (ii) that they did not owe any duty of care to the plaintiff as it was not their clients and that it would be too remote to expect their actions may have any impact on the plaintiff.

**[8]** The first defendant specifically contends that there is no evidence that the said transaction is fraudulent. The said bank's solicitors contend that the transfer of the said funds was genuine.

**Applicable Law**

*Whether There Exists A Duty Of Care Owed To The Plaintiff*

**[9]** Before the defendants are held liable for the alleged negligence, it is incumbent upon the plaintiff to prove that the defendants owed a duty of care to it and that the breach of the said duty caused losses to the plaintiff.

**[10]** To determine whether the defendants owed any duty of care to the plaintiff, it must be shown that (i) there is a relationship of proximity between the plaintiff and the defendants (the proximity test), (ii) it is foreseeable that the defendant's conduct could harm to the plaintiff (foreseeability test) and (iii) it is fair, just and reasonable to impose liability to the defendants for such harm (policy consideration). I refer to *Caparo Industries Plc v. Dickman* [1990] 2 AC 605, *Koperasi Sahabat Amanah Ikhtiar Bhd v. RHB Investment Bank Bhd* [2023] 1 CLJ 495 and *Pushpaleela R Selvarajah & Anor v. Rajamani Meyyappa Chettiar & Other Appeals* [2019] 3 CLJ 441; [2019] 2 MLJ 553.

**[11]** The determination of whether the said defendants and the banks owned any duty of care to the plaintiff will have to be determined on the factual matrix of each case. As Lee Swee Seng JCA pointed out, one should not determine such issues merely based on pigeonholing cases into neat categories despite how hard one wishes to do so.

**[12]** The fact that the defendants did not have any direct relationship with the plaintiff, *ie*, the company is not a customer of the banks or has any contractual relationship, does not automatically mean that the banks do not owe any duty of care. I will have to determine this by taking into account the factual matrix of this case and applying the test as stated earlier to the facts of this case.

**Standard Of Care To Be Expected Of The Banks**

**[13]** This court will then have to determine the standard of care that is owed by the banks/defendants to the plaintiff. I believe the standard of care that will be expected of such banks is "whether a reasonably prudent banker, faced with the same circumstances, would regard the action taken on the facts justifiable".

**[14]** It is also trite that "a bank has to ensure that (i) payment is made with the authority of the customer and (ii) the person who is being paid is entitled to receive the payment. There is breach of duty of care if a bank makes payment without the customer's authority or mandate. No banking transaction would be safe if a bank flouts that in the name of convenience or no reason to be 'put on inquiry'" (per Lee Swee Seng JCA in *Koperasi Sahabat Amanah Ikhtiar Bhd v. RHB Investment Bank Bhd* [2023] 1 CLJ 495.

**[15]** However, that is not the end of the issue for determination. This court is still required to determine the standard of care required of the banks/defendants. This court must determine the standard expected of a reasonably prudent banker and test what the reasonably prudent banker would have done in the circumstances of this case.

**[16]** I refer to *Nyo Nyo Aye v. Kevin Sathiseelan Ramakrishnan & Anor And Another Appeal* [2020] 5 CLJ 82, *Dato' Dr V Thuraisingam & Anor v. Sanmarkan Ganapathy & Anor* [2015] 8 CLJ 248, *Shearn Delamore & Co v. Sadacharamani Govindasamy* [2017] 2 CLJ 665 and *Lay Wan Yeow & Anor v. Chin Kok Soon & Anor* [2023] 3 CLJ 309.

**[17]** There is no hard and fast rule when one considers this issue. The reported cases show that there are circumstances where the court could consider, based on the facts of each case, whether the action of a professional is negligent or otherwise, even if the claimant fails to tender evidence of a competent professional to support the said contention. This may be applicable where it is so appropriate and obvious that the court could

consider the allegation on its own. One could see this in *Nyo Nyo Aye v. Kevin Sathiseelan Ramakrishnan & Anor And Another Appeal* [2020] 5 CLJ 82 and this is to be contrasted with the decision of the Court of Appeal in *Shearn Delamore & Co v. Sadacharamani Govindasamy* [2017] 2 CLJ 665.

**[18]** An example of the application of this requirement can be seen in *Shalini Kanagaratnam v. Pusat Perubatan Universiti Malaya & Anor* [2016] 6 CLJ 225 where Hamid Sultan Abu Backer JCA stated:

> [9] In cases of professional negligence and/or medical negligence, the plaintiff has to prove four elements. They are (i) duty of care; (ii) breach of standard of care; (iii) breach of duty of care; and (iv) caused damages. In consequence, the plaintiff has to lead evidence to show the standard of care has been breached. The doctrine of *res ipsa loquitur* will not ordinarily apply as the plaintiff will have to discharge the legal burden and only after the legal burden has been discharged, the defendant has to satisfy that legal duty was not breached.
>
> [10] It is also well-established in medical negligence cases that the plaintiff must establish the appropriate standard of care and demonstrate that the standard of care has been breached, with expert evidence. The trial courts observation on this issue reads as follows:
>
> The court was satisfied that the plaintiff had failed to discharge her burden of proving her claim on a balance of probability.
>
> My reasons are as follows:
>
> (1) The plaintiff failed to call Dr. Nithya Ramamurthy from Malar Hospital whose very opinion is the thrust of her pleaded claim (see para 11-12, p 57, Bundle A).
>
> (2) The plaintiff's only witness other than herself and her father was PW1, who, by the plaintiffs own submission, merely interpreted a recent cancer market report which showed that the plaintiff currently no longer has cancer.
>
> (3) No other expert evidence has been adduced by the plaintiff in support of her claim that she did not have cancer in 2000 and 2006.
>
> (4) More importantly, no evidence was led during the trial or sought during the discovery stage of the proceedings to prove any of her pleaded allegations of negligence against the 1st and 2nd defendants.
>
> [11] In ordinary negligence case, 'standard of care' will not be in issue. However, in 'professional negligence' case, the burden is placed on the plaintiff to establish the 'standard of care' has been breached. Learned author *Bullen and Leake and Jacobs on Precedents and Pleadings*, 28th edn, have separated the precedents and pleadings for negligence and professional negligence to make out the distinction. In *Dato' Dr V Thuraisingam & Anor v. Sanmarkan Ganaoathv & Anor* [2015] 8 CLJ 248, Hamid Sultan Abu Backer JCA sitting with Badariah Sahamid JCA and Prasad Sandosham Abraham JCA had *inter alia* held:

A (2) The threshold for the plaintiffs to succeed is high in contrast to ordinary negligence cases. However, even though the threshold is high for the plaintiff, once duty of care as well as standard of care has been breached and it is established against the doctor, case laws have placed the evidential burden on the doctor to rebut the plaintiffs' allegation when such allegation is supported by
B expert evidence to say the doctor has not satisfied the standard of care, expected of his professional standing.

**Application Of The Law To The Facts Of This Case**

**[19]** The issues that have been raised by the plaintiff could be categorised
C as follows:

(i) allegation that the defendants were negligent in the operations of the accounts held by Matt Advance Trading and Weez Global:

(a) negligent in allowing the said fraudsters to open and operate their accounts with the bank;

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(b) negligent by failing to monitor inbound payments to identify potentially suspicious activities or turning a blind eye to suspicious activities;

(c) negligent in allowing fraudsters to abuse and misuse the banking
E system to commit fraud;

(d) negligent by failing to comply with regulatory requirements to prevent money laundering;

(e) negligent by failing to verify the authenticity of payment orders
F as the parties, Nemonia and the fraudsters (Matt Advance Trading and Weez Global) did not have any relationship earlier; and

(f) negligent by facilitating or making it easier for the fraudster to undertake their scheme against the plaintiff.

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(ii) negligent in not ensuring that these fraudulent transactions are identified and stopped:

(a) when money was received; and

(b) when the notice was issued by the instructing banks.

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**[20]** I will deal with the above in the following paragraphs.

**The Allegation That The Defendants Were Negligent In The Operations Of The Accounts Held By Matt Advance Trading And Weez Global**

*Duty Of Care Owed To The Plaintiff*

I

**[21]** I am of the opinion that the defendants do owe a duty of care to the plaintiff irrespective of the fact that the said company is not a customer of the banks.

**[22]** Considering that the defendants are aware that the monies were transferred from the accounts of the plaintiff from the Bank of Cyprus, the said defendants did have an indirect relationship with the plaintiff.

**[23]** In this day and age, I do not find it acceptable for a bank in the circumstances of this case to say that there is no relationship of proximity between them and the plaintiff. The monies were transferred from the plaintiff's accounts in the Bank of Cyprus into the accounts that were held with the defendants. There is a relationship of proximity between the plaintiff and the defendants fulfilling the proximity test.

**[24]** I also find that it is foreseeable that the defendants' conduct could harm to the plaintiff. If for example the instructions received through the Swift system were not complied with then there is a clear possibility that the plaintiff may suffer damages. One could see this operating in *Koperasi Sahabat Amanah Ikhtiar Bhd v. RHB Investment Bank Bhd* [2023] 1 CLJ 495.

**[25]** Finally, I find that it is fair, just and reasonable to impose liability to the defendants for such harm. Banks in this era, should bear some responsibility and owe a duty of care to users of the financial system irrespective of whether they are their customers or otherwise.

**Whether The Defendants Breach The Said Duty Of Care**

**[26]** The second issue that must be determined is whether the said defendants were in breach of the said duty of care. The burden of proof lies solely on the plaintiff to prove that the defendants did breach their duty of care to it. It is for the plaintiff to show the standard that must be complied with by the defendants and that the defendants did not comply with the said standard.

**[27]** In this case, the plaintiff's sole witness was the alleged beneficial owner of the shares in the company, Sinelnik Yury.

**[28]** Much of his evidence revolves around the alleged scam undertaken by Siti Mah binti Penggawa with the assistance of third parties that caused monies held in the Bank of Cyprus to be transferred into the accounts of Matt Advance Trading and Weez Global Trading.

**[29]** The witness statement of the plaintiff dealt substantially with how the scam was undertaken and how his lawyers in Cyprus were hoodwinked by these scammers to transfer the said monies into these accounts.

**[30]** The witness statement only dealt with the alleged negligence of the said defendants in paras. 22 to 25 of the said document.

**[31]** There is no evidence tendered or produced to this court as to the standards at which the banks should be adjudged. Despite requests by this court that this standard of a reasonably competent banker is identified or at least the standard expected by the Central Bank of Malaysia or internally by

these banks as to (i) how accounts are to be opened, (ii) how accounts are to be monitored, (iii) how monies received overseas are certified, (iv) what anti-money laundering standards are to be complied with and (v) what a reasonably competent banker would have undertaken, there was no evidence provided to this court.

**[32]** This is crucial, as unlike that of the conduct of an advocate and solicitors in a negligence case, this court does not have the general requisite knowledge of the practice to be expected of a reasonably competent banker that the plaintiff wishes to rely on. The burden of proof to show the standard that they wish to put the defendants to rely solely on the plaintiff. It is not for the defendants to prove the standard until such time the plaintiff proves the case of negligence, especially that of the standard of care that they rely on. See: s. 101 of the Evidence Act 1950, *Sundram Ramasamy v. Arujunan Arumugam & Anor* [1994] 4 CLJ 300 and *Ang Yew Meng & Anor v. Dr Sashikannan Arunasalam & Ors* [2012] 3 CLJ 937.

**[33]** An example could be seen from the judgment of the Court of Appeal in *Dato' Dr V Thuraisingam & Anor v. Sanmarkan Ganapathy & Anor* [2015] 8 CLJ 248:

> [26] A useful guideline in Medical Negligence cases is always for the trial court to keep in mind the salutary words of Lord Denning in *Hucks v. Cole* [1993] 4 Med LR 393, where His Lordship asserted that to find liability against a doctor 'his conduct should be deserving of censure or inexcusable'. That is to say, the threshold for the plaintiffs to succeed is high in contrast to ordinary negligence cases. However, even though the threshold is high for the plaintiff, once duty of care as well as standard of care has been breached and it is established against the doctor, case laws have placed the evidential burden on the doctor to rebut the plaintiffs' allegation when such allegation is supported by expert evidence to say the doctor has not satisfied the standard of care, expected of his professional standing. In *Bolam*'s case, McNair J has suggested a guideline to determine if the doctor has breached the standard of care. His Lordship's guideline reads as follows:
>
> A doctor is not guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art ... Putting it the other way round, a doctor is not negligent, if he is acting in accordance with such a practice, merely because there is a body of opinion that takes a contrary view.
>
> [27] The facts of *Bolam*'s case as said earlier, not only relates to diagnosis and treatment but also to medical advice. One of the articles published in the Malayan Law Journal on this point reads as follows:
>
> The *Bolam* test was applied to the medical aspects of diagnosis, advice and treatment.
>
> [28] Cases and articles assert that *Bolam*'s case advocates 'Medical Judgment'. In *Sidaway v. Board of Governors of the Bethlem Royal Hospital* [1985] AC 871, Lord Scarman opined:

> The *Bolam* principle may be formulated as a rule that a doctor is not negligent if he acts in accordance with a practice accepted at the time as proper by a responsible body of medical opinion even though other doctors adopt a different practice. **In short, the law imposes the duty of care: but the standard of care is a matter of medical judgment.**
>
> [29] That is to say, the trial court is bound by the medical opinion and will not find the doctor negligent as long as there is a respectable body of medical opinion that supports his action. 'Medical Judgment' proposition impinges on the Malaysian court's role to adjudicate on the matter and in the context of Evidence Act 1950. opinion of experts is not meant to be the last say on the issue. Judicial supervision of the court on the conduct of any body or person cannot be curtailed by any judicial decision *per se* unless such protection is given to the class of person by the Federal Constitution. In addition, the patient being a layperson, ordinarily may not have the financial means and may also be at a disadvantage as he may have difficulty to bring 'respectable body of medical opinion' to match the doctor's expert's evidence. In consequence, judicial supervision and determination will be of assistance to the patient in dealing with medical negligence cases, which is also part of our jurisprudence to do so.
>
> [30] *Bolam*'s case in our view, does not in any way attempt to impinge on the role of the Malaysian court to decide on the issue of negligence independently after weighing experts' medical evidence. It is not totally correct to say 'the standard of care is a matter of medical judgment' in the Malaysian context. Further, under the Evidence Act 1950, an expert view, in order to qualify as representative of a 'responsible body of medical opinion had to satisfy the threshold test of logic'. (See *Dr Khoo James & Anor v. Gunapathy d/o Muniandy and Another Appeal* [2002] 2 SLR 414 (*Dr Khoo James*)). This proposition was well articulated in the case of Bolitho. (emphasis added)

**[34]** I also refer to *Shalini Kanagaratnam v. Pusat Perubatan Universiti Malaya & Anor* [2016] 6 CLJ 225, *Hong Chuan Lay v. Dr Eddie Soo Fook Mun* [1998] 5 CLJ 251; [1998] 7 MLJ 481, *Payremalu Veerapan v. Dr Amarjeet Kaur & Ors* [2001] 4 CLJ 380; [2001] 3 MLJ 725 and *Shearn Delamore & Co v. Sadacharamani Govindasamy* [2017] 2 CLJ 665 that reiterates the above requirement of duty to prove the standard of care required of such professional. This is to be contrasted to that of a typical road accident case where such requirements may not be necessary as the law presumes the standard to be that of a reasonable man on the *Clapham Omnibus* or the *Malaysian MRT*.

**[35]** In this case, I reiterate that the plaintiff has only produced Mr Sinelnik Yury. The plaintiff did not call any party or any person to testify and explain the standard expected of a reasonably competent banker in (i) opening an account, (ii) monitoring accounts, (iii) standard operating procedure in Swift transactions and (iv) required anti-money laundering procedures that are required by banks or by the Central Bank of Malaysia. At the very least, the plaintiff should have produced the guidelines or regulations made out by the

Central Bank of Malaysia or internally of these banks or other banks to enable this court to ascertain the standard of care required of a professional banker.

**[36]** I do note that Mr Sinelnik Yury did give evidence of his experience overseas as to what the banks there undertake and his views as to the standard he believes should be adhered to. However, I do note that he is not a banker and has been an international businessman since 1992 and was within the Russian Cabinet briefly from 1999 to 2001.

**[37]** I reiterate that it is not for the defendants to refute the plaintiff's contention until such time the burden of proof is discharged.

**[38]** Therefore, I find that the plaintiff has failed to discharge the burden of proof required of it in its claim for negligence concerning the issue of (i) opening of the accounts by the defendants on behalf of Matt Advance Trading and Weez Global Trading, (ii) compliance with money laundering regulations and (iii) enabling fraudsters to utilise banking transactions.

**[39]** An important consideration that I have considered is that at the time of opening of those accounts by Matt Advance Trading, Weez Global Trading and Siti Mah binti Penggawa with the defendants, I find that the evidence of (i) Mohd Zulhaini bin Zuall (WS DW(1)), (ii) Rozita binti Talib (WS DW(3)), and (iii) Edrian bin Mohd (WS DW(5)), all explained the process at which the said bank accounts were opened. The said witnesses explained that the records indicate that the requirements for the opening of the accounts were undertaken by the defendants. The officers in charge of the opening of the accounts had checked the particulars of the client, tested the clients based on the internal testing of the banks, undertaken a biometric test of the account holder, checked the business registration of the said account holder and undertaken biometric tests on Siti Mah binti Penggawa. The standard due diligence tests were undertaken by the banks at the time of the opening of the accounts.

**[40]** Like I have said earlier, there is no evidence produced by the plaintiff to show the alleged standard that the defendants should have complied with. This is crucial evidence missing from the outset of the plaintiff's case.

**[41]** The plaintiff's counsel should have at least produced the guidelines of Bank Negara Malaysia, if any, on the issue of (i) opening of accounts, (ii) monitoring of accounts and (iii) anti-money laundering, and tested these requirements to what was undertaken by the defendants. No such attempt was made by the plaintiff's counsel despite repeated notice given to counsel during the trial. As such, this court has no choice but to find against the plaintiff on the issue of negligence on the above claims.

**Negligent In Not Ensuring That These Fraudulent Transactions Are Identified And Stopped – At The Time When Money Was Received**

**[42]** The first issue I have to consider is the plaintiff's contention that when the funds were transferred *via* instructions received through Swift, the defendants should have made inquiries as to the purpose of the payment and ensured that the payments made from the plaintiff's account were genuine.

**[43]** This court is aware that s. 14 of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLA) states that the defendants are required to report to Bank Negara Malaysia any transaction exceeding RM50,000 or where it could be shown that there exist any circumstances of the transaction that provides any reason to suspect that the proceeds are from an unlawful activity. Section 22(1) of the same Act requires officers of such banks to take all reasonable steps to ensure compliance with the requirements of prompt reporting.

**[44]** What is important is that, it must be shown by the plaintiff that there exist circumstances which would have raised suspicion on the part of the officers of the defendants that require compliance with ss. 14 and 22 of the AMLA.

**[45]** I believe that at the time when the monies were received, it could not be said that the said transaction was on its face value suspicious. After all, the monies were transferred through instructions received within the Swift system from credible financial institutions such as Deutsche Bank and Society General. These are international financial institutions of credible standing who would be expected to have undertaken their internal queries before payment instructions are transferred to the accounts with the defendants.

**[46]** Furthermore, the officers of the second, third and fourth defendants, namely Suzzanna Alysa binti Surul (WSDW (4)) and Anizan binti Mohamad AN (WSDW (2)), explained that they had checked with Deutsche Bank as to the purpose of the said payment or checked with the client/customer as to the purpose of the said payment. Having received a response from Deutsche Bank and the customer as to the purpose of the said payment, it cannot be said that these defendants were negligent.

**[47]** I also must consider the steps taken by the second, third and fourth defendants at the time when the transaction was undertaken and not with hindsight as suggested by the plaintiff. When the transaction was instructed by the instructing banks, Deutsche Bank and Society General, the defendants would not have known or could have foreseen that the said transactions were undertaken fraudulently by scammers.

**[48]** Concerning the first defendant, I also do not find any evidence of any wrongdoing justifying a claim of negligence against the said entity when they received the instructions to remit the payment into the relevant accounts.

**[49]** I have also considered the decision of the Federal Court in *Chang Yun Tai & Ors v. HSBC Bank (M) Bhd & Other Appeals* [2011] 7 CLJ 909, where Zulkefli Makinudin FCJ held:

> [15] It is to be noted the SPA has already been executed before the end financing facilities were granted. Therefore, the respondent can presume that the SPA which the appellants had entered into has been ascertained by the appellants to be valid. It would be too onerous to require the respondent to investigate or enquire into a transaction or contract to which they are not a party. Banking business will be rendered impracticable and burdensome if this was so. In this regard the courts should not impose such a requirement that may impede the flow of commerce. On this point Edgar Joseph Jr FCJ in *The Co-operative Central Bank Limited (In Receivership) v. Feven Development Sdn Bhd* [1995] 4 CLJ 300 in delivering the judgment of this court cautioned at p. 313 as follows:
>
> ... a commercial Judge must be anxious about the impact that a decision may have on the proper functioning of the commercial community.

**[50]** I have earlier referred to the decision of the Court of Appeal in *Koperasi Sahabat Amanah Ikhtiar Bhd v. RHB Investment Bank Bhd* [2023] 1 CLJ 495. I am aware that Lee Swee Seng JCA in the said case did hold:

> [124] A reasonably prudent investment bank having received the sum of RM10 million from a depositor would act in a commercially acceptable way to verify the identity of the depositor, the purpose of the deposit and instructions with respect to the deposit of the substantial sum of RM10 million. Thus, in *Niru Battery Manufacturing Co v. Milestone Trading (No 1)* [2002] 2 All ER (Comm) 705 at p. 741, Moore-Bick J held:
>
> > [135] ... I do not think that it is desirable to attempt to define the limits of good faith; it is a broad concept, the definition of which, insofar as it is capable of definition at all, will have to be worked out through the cases. In my view it is capable of embracing a failure to act in a commercially acceptable way and sharp practice of a kind that falls short of outright dishonesty as well as dishonesty itself. The factors which will determine whether it is inequitable to allow the Claimant to obtain restitution in a case of mistaken payment will vary from case to case, but where the payee has voluntarily parted with the money much is likely to depend on the circumstances in which he did so and the extent of his knowledge about how the payment came to be made. Where he knows that the payment he has received was made by mistake, the position is quite straightforward: he must return it. This applies as much to a banker who receives a payment for the account of his customer as to any other person: see, for example, the comment of Lord Mersey in *Kerrison v. Glyn, Mills, Currie & Co.* (1912) 81 LJKB 465 (HL) at p 472 ...

> [125] We further agree that there was a breach of this duty of care on the part of D1 when it channelled the plaintiff's RM10 million into D3's trading account without due care and regard for the plaintiff's instructions. There was no mandate by the plaintiff to pay out its RM10 million to D3. D1 is vicariously liable for the acts of SP2 and its Credit Control Department. D1's breach of its duty of care undoubtedly caused the plaintiff to suffer the loss of RM10 million or such lesser amount after taking into consideration the "dividends" it received.

**[51]** However, the facts as they appear in the aforesaid case are substantially different to the facts before this court. In that case, it was clear that the defendant had failed to comply with the bank's own internal standard operating procedures and that there was a clear breach of the mandate received when it received the RM10 million cheque from the plaintiff. The Court of Appeal held that the bank should have then inquired as to whom the said cheque is to be deposited into when the instructions were unclear as the cheque was made in the name of the bank instead of a particular company or entity.

**[52]** In this case, the defendants had received clear instructions from the instructing banks to pay the aforesaid sums into the accounts held by Weez Trading and Matt Advance Trading. There is no evidence of any requirement or regulation that the defendants or any bank undertake any investigation as to the purpose of these payments unless it is shown there are suspicious circumstances. As I said earlier, the facts as it appears to me, at the time when the said sums were received, do not on their side show any suspicious circumstances justifying any form of investigation as suggested by the plaintiff.

**[53]** The counsel for the plaintiff did not provide any proof of any directions or regulations or any form of rules that are required by Bank Negara Malaysia or any internal guidelines or rules. This was undertaken in *Koperasi Sahabat Amanah Ikhtiar Bhd v. RHB Investment Bank Bhd* [2023] 1 CLJ 495 as seen in paras. 99 to 166 of the judgment of the Court of Appeal, in this case no such attempt was undertaken by counsel despite being reminded by court of the need to do the same.

**[54]** Therefore, on the issue of monitoring the accounts of the alleged scammers when the monies were received, I do not believe that the said defendants have breached their duty of care owed to the plaintiff.

**Duty To Act When Notice Of Fraud Was Received From Deutsche Bank, Society General And Bank Of Cyprus**

**[55]** It is clear to me that the second to fourth defendants did not breach their duty of care to the plaintiff at the time when notice of the alleged fraud was received from the instructing banks, Deutsche Bank and Society General and even from the Bank of Cyprus.

**[56]** When the notices were issued by the said banks to the second to fourth defendants, the monies in the accounts at issue were withdrawn and the defendants could not have taken any action to freeze the accounts.

**[57]** For the aforesaid reason, I do not believe that the said defendants were negligent as claimed by the plaintiff.

**[58]** As to the first defendant, as I have said earlier, I accept that there is no evidence of a competent professional banker to support the plaintiff's contention concerning the notices received by the said defendant.

**[59]** However, with regard to this issue, the failure to provide such evidence is not fatal. I am of the opinion that despite the said failure by the plaintiff, this court should consider that once notices are issued, banks should not shirk from their obligation to ensure that such transactions are stopped. The form utilised by the Bank of Cyprus, MT 999, may not have been the best or the most prudent notice to have been utilised. However, it is the contents of the said notice that must be looked at.

**[60]** I understand and appreciate that the first defendant's witness did suggest that it is their practice for MT 999 to be ignored and that they do not have any relationship with the Bank of Cyprus. That may have been the practice of the first defendant. However, especially with the growth of scams and fraudulent activities by third parties, I find that such notices should not be ignored totally. The said first defendant should have undertaken an investigation immediately upon receipt of the said notice even it if was in the form of MT 999. The first defendant and its officers should have at least frozen the accounts and undertaken an inquiry as to the validity of the claim/notice by Bank of Cyprus. They should not have ignored it, as they have undertaken in this case, merely because of the form used by the Bank of Cyprus. It is the substance of the allegation that should have been looked at and acted upon. I find a prudent and reasonable banker would have taken steps immediately upon receipt of the said notice.

**[61]** As I said earlier, the plaintiff had failed to call any expert on the practice of a reasonable prudent banker. The first defendant on the other hand, relies on the evidence of WSD-W1. The first defendant did state that it is their practice that such notices in MT 999 are usually ignored and to use his own words – are regarded as garbage. However, I do not accept that this practice by bankers, if any, as being reasonable, especially considering the current issues of fraud and scams that have been undertaken utilising accounts in our banking industry. I accept generally that this court will not second guess the practice undertaken within the industry, as those within the medical profession. However, when the practice is unreasonable, it is the obligation of this court to correct the said practice and set the standards that should be undertaken by the banks.

**[62]** Therefore, I find that the first defendant should have taken the reasonable step of certifying the issues highlighted by Bank of Cyprus and frozen the accounts until such time it is satisfied that the said complaint is not genuine. To ignore the said notice and allow the withdrawal of the funds to me is evidence of the negligence of the first defendant.

**[63]** I also accept that the Bank of Cyprus or the plaintiff may not have a direct contractual relationship with the first defendant. These considerations should not have closed the eyes of the first defendant. The contents of the said notice are sufficient to have caused the first defendant to take appropriate action to freeze the account and retain the sums remaining until such time they could ascertain the realities of the said transaction. To merely put the notice aside is wrong and unreasonable, especially considering the current climate of scams and money laundering being issues facing international banks.

**[64]** I however only limit the liability of the first defendant to the sums of monies that should have been retained after the said notices were issued by the Bank of Cyprus dated 22 January 2014. The evidence before me shows that the sums of RM5,004 were withdrawn on 22 January 2014 and a sum of RM315,000 were withdrawn on 23 January 2014 after the notice was issued by the Bank of Cyprus.

**Ancillary Issue Raised By The Defendants – Other Defences**

*Alleged Genuine Transaction And Identity/Authorisation Of Plaintiff's Witness*

**[65]** Another issue raised by the defendants pertains to the validity of the said transaction. They allege that there is no evidence that the plaintiff's sole witness is the representative or beneficial owner of the said entity. They also allege that the transaction with Weez Trading and Matt Advance Trading was genuine.

**[66]** Despite strenuous cross-examination of the plaintiff's witness as revealed in the notes of evidence, I find that the plaintiff's evidence shows that the said witness is the representative of the plaintiff, and he is the owner of the said entity. I also find that there is sufficient evidence, as seen in the emails and the reports filed by the plaintiff, with the authorities to show that the transactions were fraudulent. These sums were wrongly paid into the accounts held with the defendants by scammers posing as him using fake emails. The lawyers in Cyprus were duped by these scammers and the Bank of Cyprus acted on the instructions of these lawyers.

*Estoppel – Allege That The Plaintiff Has Been Fully Compensated For The Action Against The Scammers*

**[67]** The defendants also contend that as the plaintiff did constitute proceedings against the scammers, in Civil Suit No. 22NCC-56-03-2019 as well as the enforcement proceedings against Siti Mah binti Penggawa, then the plaintiff would have recovered all their damages and should be estopped from making any further claims against the defendants.

**[68]** I have considered the said documents and court orders before me and find that the plaintiff has not successfully recovered the full sums wrongly withdrawn from its account in Cyprus.

**[69]** The plaintiff is not estopped or barred in any way from claiming these sums from the defendants. However, as I have said earlier, I only find liability against the first defendant for the sum of RM315,000 due to the first defendant's failure to take appropriate steps at the time the notice is received from the Bank of Cyprus. This sum is reduced to the sum of RM263,178.30 after considering the amount garnished by the plaintiff of RM51,821.70 from the account held with the first defendant.

## Decision Of This Court

**[70]** For the above reasons, I make the following orders:

(i) the claim against the second to fourth defendants are dismissed with costs of RM20,000 to each defendant to be paid by the plaintiff;

(ii) the claim against the first defendant is allowed for the sum of RM263,178.30 with costs of RM20,000 to be paid by the first defendant to the plaintiff; and

(iii) the above orders are subject to the usual allocaturs.